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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,748	02/07/2006	Maria Palmquist	15097NP	2219

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EXAMINER
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ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/536,748

Applicant(s)

PALMQUIST, MARIA

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☒ Claim(s) 1,2,5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> .                  |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. **0203561-6**, filed on **12/02/2002**.
3. Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in **12/02/2002** on **Sweden**. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath, declaration or application data sheet does not acknowledge the filing of any foreign application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

### ***Oath/Declaration***

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

*Specification*

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented **on a separate sheet**, apart from any other text.

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1,3,4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2134393A to Richardson et al.**

8. **As to claim 1, GB 2134393A to Richardson et al. disclose an apparatus in figure 1 which is capable for securing inhalation of substantially smokeless air from a smoky room**

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**(recitation intended use is not given patentable weight, however specification page 1, col.1, lines 5-15 states the apparatus is used by person who find themselves obligated to spend some time in a smoke-filled room), the apparatus comprises a protection (mask 32) that is arranged over at least nose and mouth at face of a user (“mask may be adapted to fit over the nose and mouth region only” as stated on page 1, lines 68-70, also depicted in figure 1), to which protection** a tightly arranged tubular body (16) is connected, a nozzle (36) is arranged at the end of the tubular body at the inside of the protection adapted to be placed against the mouth of the user, which communicates with an air inlet opening (24) in the other end of the tubular body and the tubular body forms a length **(see figure 1 depicting an elongated tube 16, therefore tube 16 inherently has a length)** in elongated condition that at least extends to adjacent ground level **(tube extends from mouth region to the ankle region, see page 1, lines 47-51)**, characterized in that the tubular body that is formed of flexible material **(see page 1, line 49)**, is compactable and/expandable **(“the tube is preferably formed of a flexible plastic material such as polyvinylchloride” see page 1, lines 65-66; “mask 34 of flexible plastic material” lines 121-122, therefore, construction material inherently makes the protection and tube compactable)** and together with the protection in a folded consideration forms a package **(flexible construction material would ease in bending/folding, therefore would further allow easy packaging)** that has its substantial propagation in one plane and requires little space **(expected result from bending/folding of the protection and tube for packaging).**

9. As to claim 3, Richardson et al. disclose that the tubular body further comprise a fastening apparatus (30), suitably adjacent of the air inlet opening in an outer portion of the

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tubular body, whereby the air inlet opening of the tubular body may be arranged to connection to the lower leg or foot of the user (via 28).

10. As to claim 4, Richardson et al. do not disclose a valve (“valve means is provided in mask 32 to control the flow of air into and out of the mask”, see page 2, lines 1-2) for control of inhaled and exhaled air is arranged in the tubular body in connection to the protection.

11. As to claim 6, Richardson et al. disclose that the tubular body is formed of a think walled, elastic and flexible material (as described in claim 1) which is provided with folds (“ribs”, page 2, lines 14-15).

**Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2134393A to Richardson et al. in view of Smith US Patent No. 5,377,670.**

12. As to claim 5, Richardson et al. disclose all limitation as cited for claim1 except for “helical strip arranged in the air channel, that in elongated state substantially corresponds to the length formed by the air channel”. However, at the time of the invention, twisting/corrugations structure used inside a breathing tube was well known to one of ordinary skills in the art. **Smith US 5377670 teaches corrugated tube, where the corrugations are provided along the length of the tube to facilitate bending or shaping the tube without risk of stopped gas flow because of the kinking (see col.5 lines 45-49). Therefore it would have been obvious to one of ordinary skills in the art at the time of the invention to include an inner corrugated structure inside the tube (16) for the purposes of preventing kinking of the tube.**

***Drawings***

13. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the **“nozzle” of claim 1, “valve” of claim 4, and “fold” of claim 6** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

14. **Claim 1** is objected to because of the following informalities: applicant is directed to revise sentence structure of the claims. Underlined sentences require full attention for revision.

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15. As to **claim 5**, applicant has not clearly stated what is “helical strip” and why the structure is critical to the invention.

*Allowable Subject Matter*

16. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

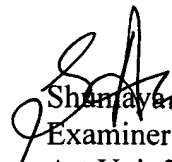
If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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 6/11/06  
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Examiner  
Art Unit 3743

  
Henry Bennett  
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